

(29,177)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 627.

---

SVEN HAAVIK, APPELLANT,

vs.

ALASKA PACKERS ASSOCIATION.

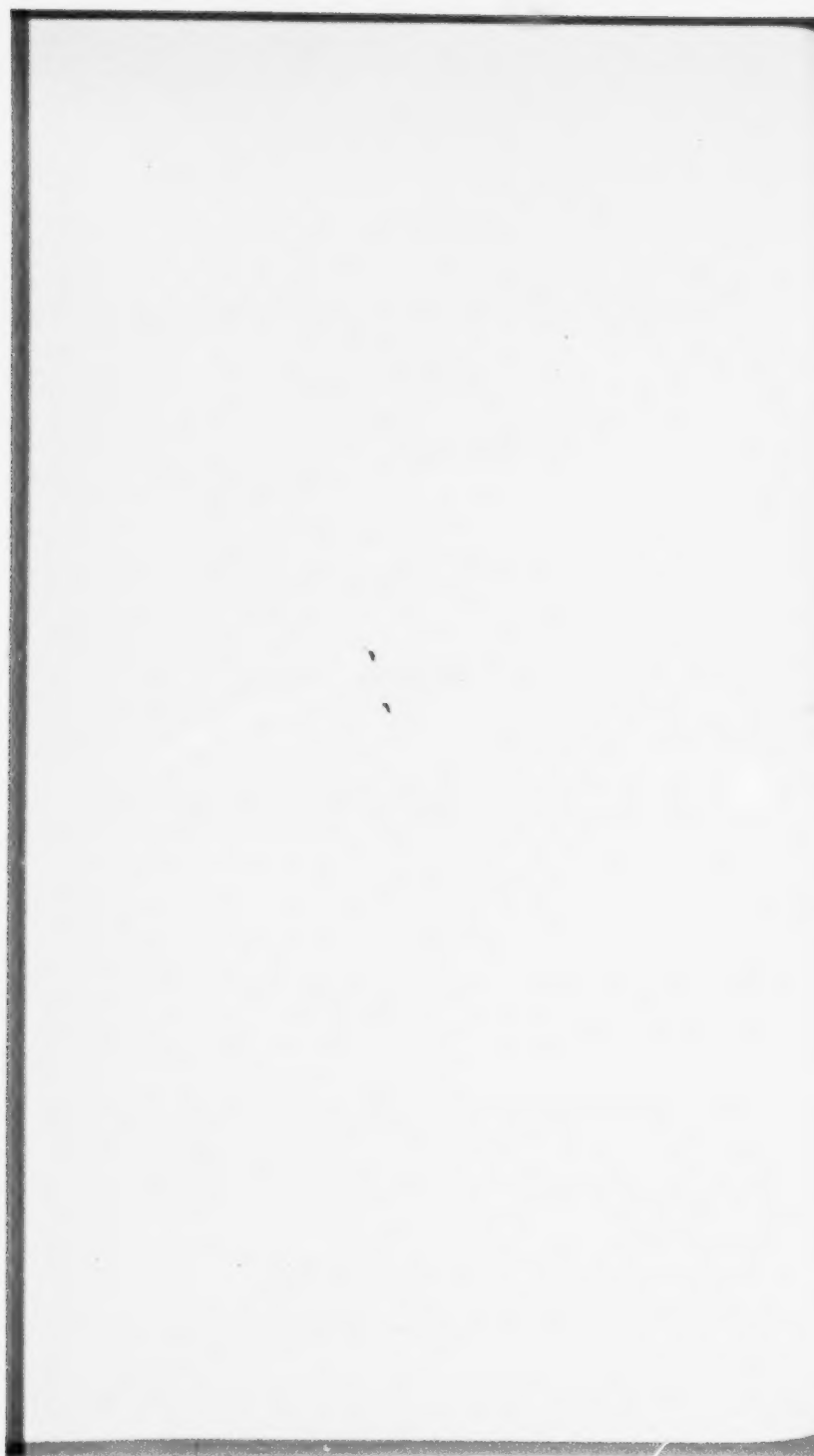
---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA.

---

INDEX.

|  | Original. | Print. |
|--|-----------|--------|
| Record from U. S. district court for the northern district of California ..... | 1         | 1      |
| Præcipe for apostles on appeal.....  | 1         | 1      |
| Libel .....  | 3         | 2      |
| Exceptions to libel.....   | 11        | 6      |
| Order sustaining exceptions one and two and overruling exception three.....    | 13        | 8      |
| Final decree.....  | 14        | 8      |
| Petition for appeal and order allowing same.....                               | 15        | 9      |
| Assignment of errors.....  | 17        | 10     |
| Clerk's certificate.....   | 20        | 11     |
| Citation and service.....  | 21        | 12     |
| Designation by appellant of parts of record to be printed..                    | 25        | 13     |



1 UNITED STATES OF AMERICA:

District Court of the United States, Northern District of California.

Clerk's Office No. 17523.

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS ASSOCIATION, Defendant and Appellee.

*Præcipe (for Apostles on Appeal)*

To the Clerk of said Court:

SIR:

Please issue to the Clerk of the Supreme Court of the United States, a record on Libelant's and Appellant's Appeal, consisting of the following papers in said cause, to wit:

The Libel,

This Præcipe and admission of service thereon,

The Exceptions of the Defendant to the Libel,

The order sustaining the Exceptions to the Libel,

The Decree,

The Assignment of Errors,

The Petition for Appeal, and Order Allowing the Appeal,

Forward original Citation, and Admission of Service thereon.

Dated: August 24th, 1922.

Yours etc.,

H. W. HUTTON,

*Proctor for Appellant.*

2 Copy of the foregoing Præcipe received this 24th day of August, 1922.

CHICKERING & GREGORY,

*Proctors for Appellee.*

(Endorsed:) Filed Aug. 24, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

3 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty,

No. (17523.)

SVEN HAAVIK, Libelant,

vs.

ALASKA PACKERS ASSOCIATION, Defendant.

*(Libel for Seamen's Wages.)*

To the Honorable M. T. Dooling, Judge of the above entitled Court:

The libel of Sven Haavik of said District, against, Alaska Packers Association, also of said District, a shipowner, ship operator and salmon canner, in a cause of wages civil and maritime, alleges as follows:

I.

That on all of the dates and times herein mentioned, Alaska Packers Association, was and now is a corporation, organized and existing under and by virtue of the laws of the State of California, and on all of said dates and times, it had, and now has its office and principal place of business in the City and County of San Francisco, State of California.

II.

That for many years last past Libelant has been a resident of the State of California, and on all of the dates and times herein mentioned he was a citizen of the United States of America, married, and a resident of the City of Alameda, County of Alameda, State of California, and he has never resided in Alaska at any time.

III.

That during the whole of the year, 1921, defendant was the owner and operator of a certain sailing vessel flying the flag of the United States of America, named the "Star of Finland."

IV.

That during the whole of the year, 1921, and for many years prior thereto, defendant was engaged in canning salmon in the Territory of Alaska, and in such canning of salmon it sent its vessels manned with seamen and fishermen from the Port of San Francisco, State of California, each year, and all the supplies used in canning



such salmon excepting only the salmon itself, to wit: cases in which to pack such canned salmon, tins in which to can it, labels to place on said tins, food for its men while working in catching and canning said salmon, and when such salmon was caught and canned, it would load the same upon its vessels and bring the same to San Francisco, in the State of California, and there sell and distribute the same to all parts of the world, none of the salmon so caught and canned by defendant being consumed in the Territory of Alaska, but on the contrary, defendant while so engaged in such business of canning salmon was engaged in interstate and foreign commerce.

#### V.

That on the 13th day of April, 1921, defendant hired and employed the libelant to serve as a seaman and fisherman upon its said vessel, "Star of Finland," said hiring taking place in the Port of San Francisco, State of California, and in pursuance of such hiring and employment, libelant signed shipping articles for such employment before the United States Shipping Commissioner for the said Port of San Francisco, the said shipping articles so signed by libelant being in the form provided by Table "A" of the Schedule  
5 attached to Section 4511 of the Revised Statutes of the United States, the voyage mentioned in said shipping articles so signed by libelant being:

"From the Port of San Francisco, California, to Alitak, Alaska, and such other Alaskan ports as the master may direct and return to San Francisco for final discharge either direct or via one or more ports on the Pacific Coast and such other ports and places in any part of the world as the Master may direct and back to a final port of discharge in the United States for a term of time not exceeding nine calendar months."

#### VI.

That there was also an agreement in said shipping articles that libelant should work in loading and discharging all cargoes and ballast if required, and work on shore or in boats as the master of said vessel might direct or the agent of defendant might direct.

#### VII.

That there was a further agreement in said shipping articles, that libelant should give his whole time and energy to the business and interests of defendant and work night or day (Sundays and holidays not excepted) according to the lawful orders of the captain, superintendent or whoever might be in charge; and that he would labor in the capacity of Seaman, Fisherman, Beachman or Trapman, also, work on boats, lighters, vessels and in canneries or salting stations if required by defendant.

#### VIII.

That for compensation for his services, as aforesaid, defendant agreed to pay libelant the sum of one hundred and fifty (\$150.00)

dollars, and one and one-half ( $1\frac{1}{2}$ ) cents for each case of canned salmon it should can and pack at the station at which libelant sailed to, the same being payable not less than seventy-five (\$75.00) 6 dollars to libelant's wife while libelant was on said voyage, to be paid in San Francisco aforesaid, and there was attached to said shipping articles which read as follows:

"All moneys earned to be payable in San Francisco after the return of the expedition, except the sum of Ten Dollars (\$10.00) which is to be paid on the homeward voyage to each man signing this agreement."

#### IX.

That pursuant to such hiring and employment and the shipping articles aforesaid libelant went on board and into the service of defendant on said vessel "Star of Finland" at said San Francisco and said vessel left said place and proceeded to said Alitak in the Territory of Alaska, Libelant working as a seaman on said vessel on said voyage from said San Francisco to said Alitak, and at said Alitak he assisted in discharging the cargo that said vessel had taken to said place for salmon canning purposes, and then in getting ready to catch and can salmon, and when the salmon began to run at said place so that salmon could be caught he went out in boats and caught salmon and when no more salmon could be caught, that which defendant had canned was by libellant and others loaded on board said "Star of Finland" and libelant thereupon went on board of said vessel and assisted in sailing said vessel back to said San Francisco, at which place all of the salmon so canned by defendant in Alaska during the year, 1921, was unloaded from said vessel and sold for consumption in all parts of the world.

#### X.

That said vessel "Star of Finland" returned to said San Francisco at the termination of said voyage on the 4th day of October, 1921, and the duration of her voyage from said San Francisco to Alitak aforesaid was about 28 days, and it took her about 11 days to 7 sail from said Alitak to said San Francisco, on her return voyage, and salmon was caught while said vessel was in Alaska for the period of about 40 days.

#### XI.

That libelant has never attended school in Alaska, nor were there any schools he could attend within several hundred miles of said Alitak, and the Alaska Salmon canning business commences each year by the departure of vessels from San Francisco, and other ports in Oregon and the State of Washington commencing with the month of April each year and ending usually with the month of September each year, and when not engaged in such business libelant works as a seaman each year on vessels sailing on the Pacific Coast of the United States, to wit on the coast of California, Oregon and Washington.

## XII.

That against the will, objections, and protest of libelant defendant when paying the libelant the wages he earned for his services while working for it as aforesaid during the year, 1921, deducted therefrom the sum of ten (\$10.00) dollars, which said defendant had paid the Territory of Alaska, as follows:

Five dollars (\$5.00) for a poll tax claimed by said Territory of Alaska from libelant under the provisions of Chapter 29, of the laws of Alaska, of the year 1919, said Chapter being found in the Session Laws of Alaska, for the year 1919, pages 74 to 84 inclusive, and the further sum of five (\$5.00) dollars, claimed by said Territory of Alaska from libelant under the provisions of Subdivision (h) of Section 12th, of Chapter 31 of the Laws of the Territory of Alaska, to be found on Page 99 of the Session Laws of Alaska for the year, 1921, under which the Territory of Alaska claimed from libelant as a non-resident fisherman the sum of five (\$5.00) dollars under its

8 said law which reads as follows:

"(h) Fishermen who are not residents of the Territory, five dollars (\$5.00) per annum. The term "fisherman" shall mean to include all persons employed on a boat engaged in fishing."

That the payment of said taxes by defendant was not binding upon the libelant for the following reasons among others, to-wit:

That it was without the jurisdiction of the Territory of Alaska to levy a poll-tax upon libelant as he was a non-resident of said Territory at the time of its attempted levy upon him.

Both said poll-tax and license tax imposed a burden on interstate and foreign commerce of the United States of America.

The deduction of the amount of each of said taxes from the wages of libelant in San Francisco, California, was without right as the laws of Alaska had no operation therein.

The payment of said poll-tax and license tax and the deduction thereof from the wages of libelant was the taking of property without due process of law.

The said license tax gave to fishermen residents of the Territory of Alaska a privilege, also, an immunity not given to the citizens of other states of the United States of America, and was, and is, in violation of the Organic Act of The Territory of Alaska, in that it gave to fishermen resident of the Territory of Alaska a special privilege and a special immunity and it, also, levied a special assessment upon non-resident fishermen.

That the Territory of Alaska had no power to levy a special license tax upon fishermen engaged in catching fish to be exported out of the Territory of Alaska.

## 9 XIII.

That the payment of the wages of libelant that were paid to him by the defendant was made in the City and County of San Francisco, State of California.

## XIV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore libelant prays that process in due form of law according to the course of this honorable Court in cases of admiralty and maritime jurisdiction may issue against the defendant, Alaska Packers' Association, and that it may therein be cited to appear and answer under oath all and singular the premises aforesaid and that this honorable Court will be pleased to decree the payment of the wages aforesaid, with interest and costs, and that libelant may have such other and further relief as in law and justice he may be entitled to receive.

H. W. HUTTON,  
*Proctor for Libelant.*

SVEN HAAVIK,  
*Libelant.*

10 UNITED STATES OF AMERICA,  
*Northern District of California, ss:*

Sven Haavik being first duly sworn deposes and says as follows: I am the libelant above named, I have read the foregoing libel and I know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated on information or belief, and as to those matters I believe it to be true.

SVEN HAAVIK.

Subscribed and sworn to before me this 24th day of April, 1922.

MATTIE G. STIRLING, [SEAL.]  
*Notary Public in and for the City and  
County of San Francisco, State of California.*

(Endorsed:) Filed Apr. 26, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

11 In the Southern Division of the United States District Court,  
Northern District of California, First Division.

(No. 17523.)

SVEN HAAVIK, Libelant,  
vs.

ALASKA PACKERS ASSOCIATION, Defendant.

*Exceptions to Libel.*

To the Honorable M. T. Dooling, Judge of the above-entitled Court:

The exception of Alaska Packers Association, defendant, to the libel and complaint of the above-named libelant herein, alleges as follows:

## I.

That the facts stated in said libel are not sufficient to constitute a cause of action or claim against this defendant.

## II.

That the facts stated in said libel show that the cause is directly controlled by the decision of this Court and of the United States Circuit Court of Appeals in and for the Ninth Circuit, in the action of Hedenskoy versus Alaska Packers Association, reported in 267 Federal Reporter, at page 154.

## III.

The libel is insufficient and indistinct on the following grounds:

12 (a) It does not appear therein whether or not the fishing license therein referred to was issued upon an application being made by libelant as required by the law of the Territory of Alaska.

(b) It does not appear therein, nor can it be determined therefrom, whether or not the performance of the services as a fisherman in Alaska, as alleged in said complaint, constitutes the main business and source of livelihood of libelant, or what proportion of the time of the libelant has been spent each year in such business as a fisherman in Alaska, nor does it appear for how many years libelant has been accustomed to go to Alaska to work as a fisherman as alleged in the libel.

(c) It does not appear therein whether or not libelant had authorized defendant to pay the Territory of Alaska the sums of money respectively claimed for the poll tax and also for the fishing license.

(d) It does not appear therein whether or not the employment as fisherman as alleged in said libel was an engagement in interstate or foreign commerce of the United States.

Wherefore, the defendant prays that the libel may be dismissed with costs.

CHICKERING & GREGORY,  
*Proctors for Defendant.*

(Endorsed.)

Due service of the within Exceptions and receipt of a copy is hereby admitted this 9th day of August, 1922.

Filed Aug. 10, 1922.

W. B. MALING,

*Clerk.*

By C. W. CALBREATH,

*Deputy Clerk.*

H. W. HUTTON,

*Proctor for Libelant.*

- 13 At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the city and county of San Francisco, on Saturday the 12th day of August, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Frank H. Rudkin, Judge.

No. 17523.

SVEN HAAVIK, Libelant,

vs.

ALASKA PACKERS ASSOCIATION, Respondent.

*(Order Sustaining Exceptions One and Two and Overruling Exception Three.)*

This cause came on regularly for hearing of exceptions to libel. After hearing H. W. Hutton, Esq., Proctor for Libelant, it was ordered that exceptions one and two be, and the same are hereby, sustained, and that exception three be, and the same is hereby, overruled.

- 14 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty.

(No. 17523.)

SVEN HAAVIK, Libelant,

vs.

ALASKA PACKERS' ASSOCIATION, Defendant.

*(Final Decree.)*

Defendant's exceptions to libelant's libel having been submitted to the Court for decision, and the Court being fully advised, it is now ordered, adjudged and decreed, and this does order adjudge and decree, that the first and second of said exceptions be, and they each are, hereby sustained, and otherwise the remaining of said exceptions are overruled, and libelant declining to amend, libelant's libel is hereby dismissed, with costs to be taxed.

Dated: August 18, 1922.

FRANK H. RUDKIN,  
*United States District Judge.*

(Endorsed:) Filed Aug. 18, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

- 15 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

(No. 17523.)

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS' ASSOCIATION, Defendant and Appellee.

*(Petition for Appeal.)*

Sven Haavik, the Libelant and Appellant above named, considering himself aggrieved by the final decree made and entered in the above entitled cause on the 18th day of August, 1922, wherein and whereby his libel in the above entitled cause was dismissed, hereby appeals from the said decree and each and every part thereof to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith; and said Appellant prays that his petition for his said appeal be allowed, and that a transcript of the record, proceedings and papers upon which the decree was made may be sent to the said, the Supreme Court of the United States, there being none but constitutional questions involved in said appeal.

Dated: at San Francisco, California, this 23rd day of August, 1922.

H. W. HUTTON,

*Proctor for Libelant and Appellant.*

- 16 *(Order Allowing Appeal.)*

Upon the foregoing petition of Sven Haavik, libelant and appellant above named, praying for the allowance of an appeal in the above entitled action to the Supreme Court of the United States, it appearing that said libelant and appellant has duly filed his assignment of errors as required by law and the rules of said Supreme Court of the United States, now therefore,

It is hereby ordered that the said appeal be, and the same is hereby allowed as prayed for.

And it further appearing that Libelant's claim is one for seamen's wages, and that under the Act of Congress of July 1st, 1918, 40 Statutes at Large, Page 683, no bond can be required of a seaman so suing, it is ordered that no bond be required of said Libelant and Appellant on said appeal.

Dated: August 24th, 1922.

WM. H. HUNT,

*United States Circuit Judge.*

(Endorsed:) Filed Aug. 24, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.



- 17 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

(No. 17523.)

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS' ASSOCIATION, Defendant and Appellee.

*Assignment of Errors.*

I.

The Court erred in sustaining defendant's first exception to Libelant's libel, for the following reasons:

(a) Libelant being a resident of and domiciled in the State of California, the Territory of Alaska had no power to tax him for any purpose.

(b) Libelant being temporarily in the Territory of Alaska for business purposes, the said Territory had no jurisdiction over him for taxation purposes.

(c) Libelant being a resident of and domiciled in the State of California, any taxation of him by the Territory of Alaska, was the taking of property without due process of law.

(d) The school, or poll tax, levied upon libelant by the Territory of Alaska imposed an unlawful burden on interstate and foreign commerce.

18 (e) The following law of the Territory of Alaska, to wit:

"(h) Fishermen who are not residents of the Territory, five dollars (5) per annum. The term 'fishermen' shall mean to include all persons employed on a boat engaged in fishing,"

is in conflict with Sub. 1 of Sec. 2, of Article IV of the Constitution of the United States.

(f) The said license tax imposed an unlawful burden on interstate and foreign commerce in the case of the libelant.

(g) The Territory of Alaska was without power to levy a tax of any character upon libelant a non-resident of the territory and but temporarily engaged in catching salmon to be exported out of that Territory.

(h) For the foregoing reasons, the payment by the defendant of the taxes complained of in the libel were not binding on the libelant.



(i) The deduction of the amount of the taxes paid by the defendant to the Territory of Alaska, from the wages of the Libelant paid in San Francisco, California, was the taking of property without due process of law, as the laws of Alaska had no operation in said San Francisco.

(j) The fishing license tax levied upon non-residents of the Territory of Alaska was a tax levied upon Libelant's property right to fish in Alaska in violation of Sec. 9 of the Organic Act of Alaska as it discriminated in favor of resident fishermen.

(k) The fishing license tax levied upon no-resident fishermen by the Territory of Alaska is a special law in violation of the Act of Congress prohibiting territories from passing local or special laws, approved July 30th, 1886.

(l) The fishing license tax levied upon non-resident fishermen by the Territory of Alaska, gives an exclusive privilege and immunity to fishermen residents of Alaska, in violation of the Act of Congress, approved July 30th, 1886, prohibiting Territories of the United States from passing local or special laws.

## II.

The Court erred in sustaining defendant's second exception to libelant's libel, for the reason that the decision of the United States Circuit Court of Appeals, in and for the Ninth Circuit, in the case of Hedenskoy v. Alaska Packers Association, reported in 267 Federal Reporter at Page 154, is in conflict with the overwhelming weight of authority on the subjects decided therein.

## III.

The Court erred in dismissing Libelant's libel.

H. W. HUTTON,  
*Proctor for Libelant and Appellant.*

(Endorsed:) Filed Aug. 24, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

20 *Certificate of Clerk U. S. District Court to Apostles on Appeal.*

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Sven Haavik, Libelant, vs. Alaska Packers Association, Respondent, No. 17523, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the præcipe for apostles on appeal (copy of which is embodied herein), and the instructions of the Proctor for Libelant and Appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Six Dollars and Sixty Five Cents (\$6.65) and that the same has been paid to me by the Proctor for the Appellant herein.

Annexed hereto is the original citation on appeal, issued herein (page 21).

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 23rd day of September A. D. 1922.

[Seal of the U. S. District Court, Northern District, California.]

WALTER B. MALING,  
*Clerk,*

By C. M. TAYLOR,  
*Deputy Clerk.*

21 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty.

SVEN HAAVIK, Libellant and Appellant,

vs.

ALASKA PACKERS ASSOCIATION, Defendant and Appellee.

UNITED STATES OF AMERICA,  
*Northern District of California, ss:*

The President of the United States of America to the defendant and appellee above named, Greeting:

You are hereby cited and admonished to be and appear before The Supreme Court of the United States, to be held at the City of Washington, District of Columbia, within sixty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Southern Division of the District Court of the United States in and for the Northern District of California, in the above-entitled cause wherein Sven Haavik, is the libellant and appellant, and you are the defendant and appellee, to show cause, if any there be, why the decree entered in the above entitled cause on the 18th day of August, 1922, in said appeal mentioned, and thereby appealed from, should not be corrected and reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Hunt, United States Circuit Judge, for the Ninth Circuit, at the City and County of San Francisco, State of California, this 24th day of August, 1922.

WM. H. HUNT,  
*United States Circuit Judge.*

Service of a copy of the foregoing citation, and of the petition for appeal, order allowing appeal, and assignments of errors, 22 & 23 in the above-entitled cause, are hereby admitted this 24th day of August 1922.

CHICKERINGS & GREGORY,  
*Proctors for Defendant and Appellee.*

24 [Endorsed:] No. 17523. In the Southern Division of the United States District Court, Northern District of California, First Division in Admiralty. Sven Haavik, Libellant, vs. Alaska Packers Association, Defendant. Citation on Appeal. Filed Aug. 24, 1922. W. B. Maling, Clerk, by F. H. Baldwin, Deputy Clerk. G. W. Hutton, 527-529 Pacific Building, San Francisco, Cal., Proctor for Appellant.

25 In the Supreme Court of the United States.

In Admiralty.

SVEN HAAVOK, Appellant,

vs.

ALASKA PACKERS ASSOCIATION, Appellee.

The appellant in the above cause designates the following parts of the record to be printed, as necessary to a proper determination of said cause on appeal in conformity with Sub. 6 of Rule 8 of the above honorable Court, to wit;

1. The libel,
  2. The exceptions to the libel,
  3. The order sustaining the exceptions to the libel,
  4. The decree,
  5. The assignments of error.
  6. Such other parts of the transmitted record as the Clerk of the Supreme Court of the United States may in his judgment print.
- G. W. HUTTON,  
*Proctor for Appellant.*

Copy of the foregoing received, this 25th day of September, 1922.  
CHICKERING & GREGORY,  
*Proctors for Appellee.*

Merchants Exchange Building, San Francisco, California.

26 [Endorsed:] No. —. In the Supreme Court of the United States. In Admiralty. Sven Haavik, Appellant, vs. Alaska Packers Association, Appellee. Designation of parts of record to be printed. H. W. Hutton, 527-529 Pacific Building, San Francisco, Cal., Proctor for Appellee.

27 [Endorsed:] File No. 29177. Supreme Court U. S. October Term, 1922. Term No. 627. Sven Haavik, Appellant, vs. Alaska Packers Association. Designation by appellant of parts of record to be printed. Filed Oct. 2, 1922.

Endorsed on cover: File No. 29177. N. California D. C. U. S. Term No. 627. Sven Haavik, Appellant, vs. Alaska Packers Association. Filed September 28th, 1922. File No. 29177.

(7667)

**In the Supreme Court**

**OF THE  
United States**

**IN ADMIRALTY**

**OCTOBER TERM, 1923**

**No. 128**

**SVEN HAAVIE,**

*Appellant,*

**vs.**

**ALASKA PACKERS ASSOCIATION,**

*Appellee.*

**BRIEF FOR APPELLANT.**

**H. W. HUTTON,**

*Pacific Building, San Francisco,*

*Attorney for Appellant.*

## Subject Index

---

|   | Page |
|---|------|
| Argument .....  | 1    |
| Assignments of Error .....  | 7    |
| Brief of the argument.....  | 9    |
| Can an integral part of the United States impose a special<br>burden on a citizen and resident of another part, not<br>imposed on its own people..... | 21   |
| Review of the decision of the court in the case of Alaska<br>Packers Association v. John Hedenskoy, 267 Fed. 154...                                   | 31   |
| No part of the United States can levy a tax on interstate<br>and foreign commerce.....  | 17   |
| Statement of facts.....   | 1    |
| The deduction of this tax from appellant's wages in San<br>Francisco, was unlawful.....   | 25   |
| The school or poll-tax in this instance operated in the case<br>of libellant as a tax for the privilege of entering Alaska                            | 26   |
| The law taxing non-resident fishermen was in violation of<br>a part of Section 9 of the Organic Act of Alaska.....                                    | 30   |

## Table of Cases Cited

|   | Pages  |
|---|--------|
| Board of Assessors of New Orleans, etc. 216 U. S. 517..       | 17     |
| Brown v. Houston, etc. 114 U. S. 622.....                     | 34     |
| Brown v. Maryland, etc. 12 Wheat. 419.....                    | 17     |
| Brown v. Maryland, etc. 12 Wheat. 419-447.....                | 21     |
| <br>Caldwell v. North Carolina, 187 U. S. 622.....            | <br>20 |
| City of Oakland v. Whipple, 30 Cal. 112.....                  | 14     |
| Crandall v. State of Nevada, 73 U. S. 35.....                 | 27     |
| Crenshaw v. Arkansas, 227 U. S. 390.....                      | 20     |
| <br>Dewey v. Des Moines, 173 U. S. 194.....                   | <br>12 |
| Dozier v. Alabama, 218 U. S. 124.....                         | 20     |
| <br>Eoff v. Kennefickers, Tax Collector, 96 S. W. 986.....    | <br>33 |
| Ex parte White, 228 Fed. 88.....                              | 15     |
| <br>Fennell v. Pauly, 83 N. W. 799.....                       | <br>32 |
| <br>Geer v. Connecticut, 161 U. S. 519.....                   | <br>24 |
| Grigsby Coast Co. v. Freeman, 32 So. 399.....                 | 32     |
| <br>Hays v. Pacific Mail S. S. Co., 17 How. 596.....          | <br>12 |
| <br>Kehrer v. Stewart, 197 U. S. 60-65.....                   | <br>20 |
| Kelley v. Rhodes, 188 U. S. 1.....                            | 18     |
| <br>La. R. R. Com. v. Tex. P. R. R. Co., 229 U. S. 330-341... | <br>18 |
| Leloup v. Port of Mobile, 127 U. S. 640-5.....                | 20-21  |
| <br>Merriman v. Stower, 43 Maine 497.....                     | <br>17 |
| Metropolitan Life Ins. Co. v. Newark, 62 N. J. Law 74....     | 17     |
| Morgan v. Packham, 16 Wall. 471-8-9.....                      | 17     |
| <br>On Yuen Hai Co. v. Ross, 8 Sawyer 394.....                | <br>14 |
| Opinions of the Judges, 1 Metcalfe 580.....                   | 17     |
| <br>Passenger Cases, 7 How. 48 U. S. 282, 407.....            | <br>13 |
| People v. Niles, 35 Cal. 282.....                             | 15     |
| People v. Townsend, 56 Id. 633.....                           | 15     |
| Preston v. City of Boston, 12 Pick. 7.....                    | 17     |
| Pullmans' Car Co. v. Pennsylvania, 141 U. S. 18.....          | 35     |

# TABLE OF CASES CITED

iii

## Pages

|  |    |
|--|----|
| Robinson v. Langley, 18 Nev. 71.....                   | 15 |
| Robins v. Shelby Taxing District, 120 U. S. 489.....   | 19 |
| Short v. The State, 29 La. Rep. Ann. 404.....          | 14 |
| State v. Porter, 23 N. J. Law 517.....                 | 14 |
| State Tax on Foreign Held Bonds, 15 Wall. 321.....     | 12 |
| State Tax on Foreign Held Bonds, 15 Wall. 300.....     | 25 |
| State Treas. v. P. M. B. R. R., 4 Hous. Del. 158.....  | 29 |
| Stewart v. Michigan, 232 U. S. 645.....                | 20 |
| Stockard v. Morgan, 185 U. S. 27.....                  | 20 |
| St. Louis v. The Ferry Co., 11 Wall. 423.....          | 11 |
| Union Tran. Co. v. Kentucky, 199 U. S. 202.....        | 10 |
| Union Tran. Co. v. Kentucky, 199 U. S. 194-206.....    | 35 |
| Ward v. Maryland, 12 Wall. 419.....                    | 22 |
| Welton v. Missouri, 91 U. S. 275.....                  | 21 |
| Western Oil Refining Co. v. Lipson, 244 U. S. 348..... | 19 |

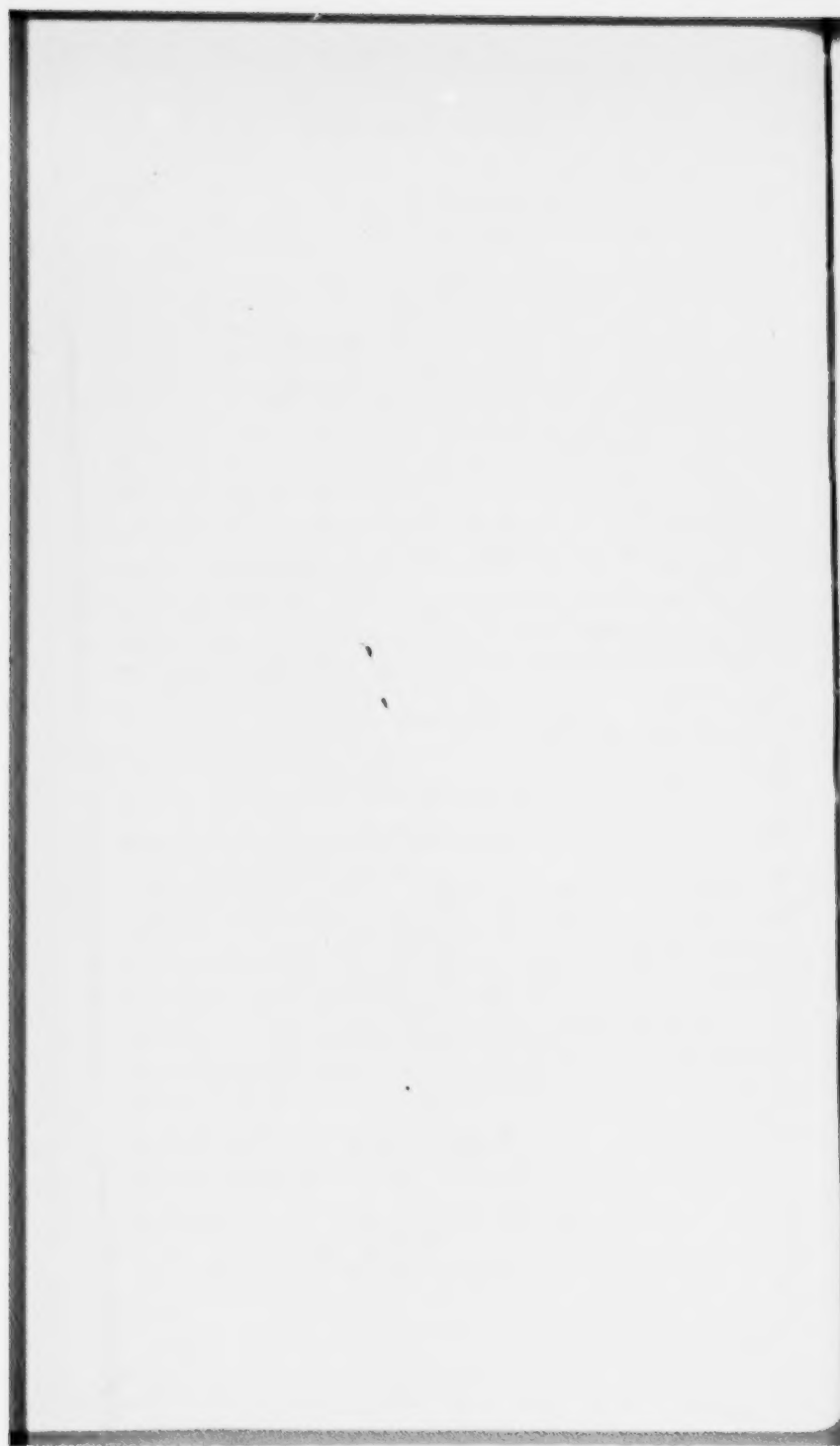
## TEXT BOOKS.

|   |    |
|---|----|
| Desty on Taxation, 256.....                   | 14 |
| Story on Conflict of Laws, Sec. 43.....       | 14 |
| Wharton on Conflict of Laws, Secs. 47-81..... | 14 |

## CONSTITUTION AND STATUTES.

|   |      |
|---|------|
| Session Laws of Alaska, 1919, p. 75 et seq.....             | 5-26 |
| Sections 1, 6 & 8.....                                      | 5    |
| Section 9 .....   | 6    |
| Session Laws of Alaska, 1921, page 108.....                 | 22   |
| Section 1 .....   | 21   |
| Section 3 .....   | 21   |
| Section 4 .....   | 7    |
| Section 11 .....  | 22   |
| Page 99 .....   | 30   |
| Organic Act of Alaska, Sec. 9.....                          | 30   |
| Sub. 1, Ar. IV, Sec. 2, Constitution of the United States.. | 22   |





# In the Supreme Court

OF THE

United States

IN ADMIRALTY

---

OCTOBER TERM, 1922

---

No. 627

---

SVEN HAAVIK,

VS.

ALASKA PACKERS ASSOCIATION,

*Appellant,*

*Appellee.*

## BRIEF FOR APPELLANT.

---

### I.

#### Statement of Facts.

This case comes to this court on an appeal from a final decree given and made by the District Court of the United States, Northern District of California, First Division, Southern Division, dismissing libelants' libel, on an order sustaining exceptions to libelants' libel.

The action was for the sum of \$10.00, taxes collected by the Territory of Alaska from appellee, and paid by it as taxes levied by the Territory of Alaska upon appellant, and deducted by appellee from appellant's wages at the termination of his service for appellee.

The facts are, that libelant is a citizen of the United States, married, and for many years prior to the date of the filing of his libel he was a resident of the State of California, and never at any time resided in Alaska. (Par. II, p. 2 of Record.)

Appellee was engaged in the salmon canning business for many years prior to, and during the year 1921, sending vessels manned with seamen from the Port of San Francisco each year, carrying all the supplies for salmon canning purposes, excepting the salmon itself to said Alaska, and when salmon was caught and canned it would load the same on vessels and bring it to San Francisco, California, where it would be sold and distributed to all parts of the world, none of said salmon so caught and canned being used in Alaska. (Par. IV, pp. 2 & 3 of Record.)

In April, 1921, appellant was employed by appellee at said San Francisco to proceed to Alaska on its vessel the "Star of Finland" as a seaman and fisherman, and he worked as a seaman in said vessel on its passage to a place called Alitak in Alaska, at which place he assisted in unloading the said "Star of Finland", then did work preparatory to and then caught salmon, which, upon its being canned, he

assisted on loading on board of the said "Star of Finland", and then worked as a seaman on said vessel on her way to said San Francisco where the salmon so caught, canned and conveyed, was sold for consumption in all parts of the world. (Pars. V, VI, VII, VIII & IX, pp. 3 & 4 of Record.)

The "Star of Finland" arrived in Alaska about the middle of May, 1921, and arrived back in San Francisco, October 4, 1921, the duration of appellant's engagement being about 5 months and 17 days. (Par. X, p. 4 of Record.)

Appellant has never attended a school in Alaska, nor were there any schools within several hundred miles of said Alitak, and when not engaged in going to Alaska in the salmon canning business, appellant worked as a seaman on vessels plying on the Pacific Coast of North America. (Par. XI, p. 4 of Record.)

That the Territory of Alaska has a law that levies a poll tax called a school tax of \$5.00 per annum, on each person in Alaska, those arriving after the first Monday in April of any year having to pay it within a specified time, and those in Alaska on the first Monday in April of any year having to pay it at another time, and it also has a taxing law, page 99 of the Session Laws of Alaska for the year 1921, which reads as follows:

"(h) Fishermen who are not residents of the Territory, five dollars (\$5.00) per annum. The term "fishermen" shall mean to include all persons employed on a boat engaged in fishing."

Appellee paid each of the taxes to the Territory of Alaska, and appellant does not dispute that it was compelled to pay the taxes as a condition of its doing business, and when being paid the wages earned by appellant in San Francisco, California, at which place such wages were payable, appellee deducted the amount it had paid for said taxes from appellant's wages and the libel was filed to recover the amount so paid for the taxes complained of upon the grounds.

"That the payment of said taxes by defendant was not binding upon the libelant for the following reasons among others, to-wit:

That it was without the jurisdiction of the Territory of Alaska to levy a poll-tax upon libelant as he was a non-resident of said Territory at the time of its attempted levy upon him.

Both said poll-tax and license tax imposed a burden on interstate and foreign commerce of the United States of America.

The deduction of the amount of each of said taxes from the wages of libelant in San Francisco, California, was without right as the laws of Alaska had no operation therein.

The payment of said poll-tax and license tax and the deduction thereof from the wages of libelant was the taking of property without due process of law.

The said license tax gave to fishermen residents of the Territory of Alaska a privilege, also, an immunity not given to the citizens of other states of the United States of America, and was, and is, in violation of the Organic Act of The Territory of Alaska, in that it gave to fishermen resident of the Territory of Alaska a special privilege and a special immunity and it, also, levied a special assessment upon non-resident fishermen.

That the Territory of Alaska had no power to levy a special license tax upon fishermen engaged in catching fish to be exported out of the Territory of Alaska."

One of the laws of Alaska, *the operation* of which upon appellant is complained of, reads in so far as is applicable to this case, as follows:

Page 75 et seq., Session Laws of Alaska, 1917

"Section 1. That there is hereby made, imposed and levied upon each male person, except soldiers, sailors in the United States Navy or Revenue Cutter Service, volunteer firemen, paupers, insane persons or territorial charges, *within* the Territory of Alaska, or the waters thereof, over the age of twenty-one years and under the age of fifty years, an annual tax in the sum of five dollars (\$5.00) to be paid and collected in the manner provided in the following sections of this Act, and to be deposited by the Treasurer of the Territory of Alaska in a separate fund called the 'School Fund' and used for no other than school purposes."

Then follows a method of collection.

Section 6 makes it a misdemeanor to fail to pay the tax, punishable by fine and imprisonment.

Section 8 requires all employers in Alaska to furnish a list of employees, and if any employee fails to pay the tax, the employer is obligated to deduct the amount thereof from the wages of the employee and pay the same to the Treasurer of Alaska himself, and makes it a misdemeanor on the part of such employer to fail to do so punishable by a fine of not less than \$50.00 nor more than

\$500.00 if a civil suit is brought against the employer for the tax of the employee, a penalty of \$25.00 for each employee is added.

Section 9,

"The school tax collector, is hereby authorized and empowered to collect said tax herein imposed from any person owing the same when the same shall become delinquent, or from any person, firm or corporation whose duty it is made by this Act to pay any tax from his or its employees, by a seizure and sale of any personal property belonging to such delinquent or to such person, firm or corporation, of sufficient value to pay such tax, penalty and costs of sale, that may be found in the district in which said tax is due and payable."

It will be seen that the employer was bound to pay that tax under penalty of having his property seized.

As to the other tax, appellant was hired to go from San Francisco to Alaska and return and catch salmon during a portion of the time he was in Alaska, the allegation is Paragraph IX, page 4, of record,

\* \* \* "and when the salmon began to run at said place so that salmon could be caught he went out in boats and caught salmon and when no more salmon could be caught, that which defendant had canned was by libelant and others loaded on board said 'Star of Finland' etc."

Appellant worked for appellee in boats while fishing, and appellee being the employer of the boat was forced to pay the license tax for its fishermen on

their account or be liable to a fine and imprisonment under Secs. 4 et seq., page 104, of the Session Laws of Alaska, 1921.

The italics throughout this brief are ours.

---

## II.

### Assignments of Error.

Appellant relies on each of his specifications of error which read:

#### I.

The Court erred in sustaining defendant's first exception to Libelant's libel, for the following reasons:

(a) Libelant being a resident of and domiciled in the State of California, the Territory of Alaska had no power to tax him for any purpose.

(b) Libelant being temporarily in the Territory of Alaska for business purposes, the said Territory had no jurisdiction over him for taxation purposes.

(c) Libelant being a resident of and domiciled in the State of California, any taxation of him by the Territory of Alaska, was the taking of property without due process of law.

(d) The school, or poll tax, levied upon libelant by the Territory of Alaska imposed an unlawful burden on interstate and foreign commerce.

18 (e) The following law of the Territory of Alaska, to wit:

“(h) Fishermen who are not residents of the Territory, five dollars (5) per annum. The



term 'fishermen' shall mean to include all persons employed on a boat engaged in fishing." is in conflict with Sub. 1 of Sec. 2, of Article IV of the Constitution of the United States.

(f) The said license tax imposed an unlawful burden on interstate and foreign commerce in the case of the libelant.

(g) The Territory of Alaska was without power to levy a tax of any character upon libelant a non-resident of the territory and but temporarily engaged in catching salmon to be exported out of that Territory.

(h) For the foregoing reasons, the payment by the defendant of the taxes complained of in the libel were not binding on the libelant.

(i) The deduction of the amount of the taxes paid by the defendant to the Territory of Alaska, from the wages of the Libelant paid in San Francisco, California, was the taking of property without due process of law, as the laws of Alaska had no operation in said San Francisco.

(j) The fishing license tax levied upon non-residents of the Territory of Alaska was a tax levied upon Libelant's property right to fish in Alaska in violation of Sec. 9 of the Organic Act of Alaska as it discriminated in favor of resident fishermen.

(k) The fishing license tax levied upon non-resident fishermen by the Territory of Alaska is a special law in violation of the Act of Congress prohibiting territories from passing local or special laws, approved July 30th, 1886.

(l) The fishing license tax levied upon non-resident fishermen by the Territory of  
19 Alaska, gives an exclusive privilege and immunity to fishermen residents of Alaska, in violation of the Act of Congress, approved July 30th, 1886, prohibiting Territories of the United States from passing local or special laws.

## II.

The Court erred in sustaining defendant's second exception to libelant's libel, for the reason that the decision of the United States Circuit Court of Appeals, in and for the Ninth Circuit, in the case of *Hedenskoy v. Alaska Association*, reported in 267 Federal Reporter at Page 154, is in conflict with the overwhelming weight of authority on the subjects decided therein."

---

## III.

**Brief of the Argument.**

This case was decided on exceptions to the libel, which admitted the truth of the allegations of the libel, but denied their legal effect.

The questions involved in this case are as follows:

1. Can an integral part of the United States impose a tax upon a resident of another part, who is temporarily in the taxing part for the purposes of trade and commerce?
2. Can any integral part of the United States levy a tax on interstate and foreign commerce?
3. Can an integral part of the United States impose a special burden on a citizen and resident of another part, not imposed on its own people?
4. Could appellee lawfully deduct the amount it paid the Territory of Alaska for appellant's taxes from money payable only outside the Territory of Alaska?

5. Can one part of the United States tax the citizens of another part for the privilege of entering the territory of the taxing part?

---

**Argument.**

**NO PART OF THE UNITED STATES CAN TAX A RESIDENT OF ANOTHER PART WHO IS BUT TEMPORARILY IN THE TAXING PART FOR THE PURPOSES OF TRADE AND BUSINESS.**

The decisions of this and other courts are uniform that such taxing is the taking of property without due process of law.

Union Transit Co. v. Kentucky, 199 U. S. 202:

"The power of taxation, indispensable to the existence of every government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property or in the creation and maintenance of public conveniences in which he shares, such, for instance, as roads, bridges, sidewalks, pavements, *and schools for the education of his children.* If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another State, to which it may be said to owe an allegiance and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, *and has been repeatedly held by this court to be beyond the power of the legislature and a taking of property without due process of law.*" (Several authorities cited.)

There were no schools within several hundred miles of Alitak, Alaska, and appellant would have to look to the schools of California for the education of his children.

St. Louis v. The Ferry Company, 11 Wallace 423:

Page 430. "Where there is jurisdiction neither as to persons nor property, the imposition of a tax would be *ultra vires* and void. If the legislature of a state should enact that the citizens or property of another state or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be *as much of a nullity as if in conflict with the most explicit constitutional inhibition*. Jurisdiction is as necessary to valid legislation as to valid jurisdiction.

"Their relation to the city was merely that of contact there, as one of the termini of their transit across the river in the prosecution of their business. The time of such contact was limited by the city ordinance. Ten minutes was the maximum of the stay they were permitted to make at any one time. The owner was, in the eye of the law, a citizen of that state, and from the inherent law of its nature could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. *They did not so abide within the city as to become incorporated with and form a part of its personal property.*"

Hays v. Pacific Mail Steamship Co., 17 Howard 596:

Page 598. "She was within the jurisdiction of all or any of them temporarily and *for a purpose wholly excluding the idea of permanently abiding in the state*, or changing her home port. We are satisfied that the state of California had no jurisdiction over these vessels, for the purpose of taxation. *They were not property abiding within its limits so as to become incorporated with the other personal property of the state, they were there but temporarily*, engaged in lawful trade and commerce with their situs at the home port, where the vessels belonged; and where the owners were liable to be taxed for the capital invested and where the taxes had been paid."

Dewey v. Des Moines, 173 U. S. 194:

Page 204. "The power to tax is, however, limited to persons, property and business within the state, *and it cannot reach the persons of a non-resident—*" State Tax v. Foreign-Held Bonds, 15 Wallace 300-319. In Cooley on Taxation, 1st Ed. p. 121, it is said that "a state can no more subject to its power a single person or a single article of property whose residence or legal situs is in another state than it can subject all the citizens or all the property of such other state to its powers."

"These are elementary propositions, but they are referred to only for the purpose of pointing out that a statute imposing a personal liability upon a non-resident to pay such an assessment as this, oversteps the sovereign power of a state."

State Tax on Foreign-Held Bonds, 15 Wallace 321:

"It is undoubtedly true that the legislature of Pennsylvania cannot impose a personal tax

upon the citizens of another state, but the common practice is to take property within the jurisdiction which belongs to non-residents. There must be jurisdiction over either the property or person of the owner, else the power cannot be exercised."

In the *Passengers Cases*, 7 Howard 48, U. S. 282, the Supreme Court says, on page 407:

"If this power to tax passengers from a foreign country belongs to a state, a tax, on the same principle, may be imposed on all persons *coming into* or passing through it from any other state of the Union. And the New York statute does in fact lay a tax on passengers on board of any coasting vessel which arrives at the port of New York, with an exception of passengers in vessels from New Jersey, Connecticut and Rhode Island, who are required to pay for one trip each month. All other passengers pay the tax every trip. If this may be done in New York, every other state may do the same, on all lines of our internal navigation. Passengers on a steamboat which plies on the Ohio, the Mississippi, or on any of our other rivers, or on the Lakes, may be required to pay a tax imposed at the discretion of each state within which the boat shall touch. And the same principle will sustain a right in every state to tax all persons who shall pass through its territory on railroad cars, canal-boats, stages, or in any other manner. This would enable a state to establish and enforce non-intercourse with every other state.

"The officers and crew of the vessel are as much the instruments of commerce as the ship, and yet they are taxed under this health law of New York as such instrument."

We can find no difference between the principles of that case and this.

In the case of *On Yuen Hai Co. v. Ross*, 8 Sawyer 384, an attempt was made to collect a capitation tax from a gang of Chinese working at railroad construction in Oregon, and it was held that they were not liable, the court holding in effect that they were non-residents, and a non-resident could not be taxed.

The law in that case expressly laid the tax on residents, but the court seems to have held it made no difference. Most capitation taxes are expressly laid on residents; that, however, simply shows that the legislatures who have so laid them, understand that they cannot lawfully lay them on any other person. The law seems to be uniform on that point.

Desty on Taxation, Headnote to Sec. 4, page 296:

“Capitation taxes may be imposed on inhabitants of the state even though they be aliens, but they cannot be imposed on non-residents.”

Short v. the State, 29 Lawyers' Reports, Ann. 404:

“The place of the imposition of Poll Taxes is universally held to depend upon *the domicile of the person* upon whom they are imposed.”

Wharton on Conflict of Laws, Secs. 47-81;

Story on Conflict of Laws, Sec. 43;

City of Oakland v. Whipple, 39 Cal. 112:

“If it had appeared that she was only in *transitu*, or there for temporary commercial purposes, the case would come fully within the principles announced in *People v. Niles* (35

Cal. 282), in which we held that personal property thus *transiently within the county* could not there be taxed; but should be taxed in the county in which the owner resided."

People v. Niles, 35 Cal. 282:

"It must appear that the property is being to some extent kept or maintained in such county, and not there casually or in transitu, or temporarily in the ordinary course of business or commerce."

People v. Townsend, 56 Cal. 633, page 636:

"But to render taxation uniform, it is essential that each taxing district should confine itself to the objects of taxation within its limits. Otherwise, there may be duplicate taxation, and consequent inequality."

Then quoting from Wells v. City of Weston, 28 Mo. 385:

"The Supreme Court of Missouri deny the right of the legislature to subject property located in one taxing district to taxation in another, upon the express ground that it is in substance the arbitrary taxation of the property of one class of citizens for the benefit of another class. \* \* \* As the very purpose of instituting government is the protection of the citizen in his person and property, power to violate these rights would seem to be quite beyond the lawful authority of any government; and certainly the legislative department of this government cannot arbitrarily take the property of one citizen and give it to another, and of course cannot authorize others to do so."



In *Robinson v. Langley*, 18 Nevada 71, a circus had been taxed, and the court said on page 73:

"In the sense of the statute, for the purposes of taxation, it was not *within* the state at the time of the assessment, it was here temporarily in the ordinary course of business. \* \* \* As well might this property have been taxed if for the purpose of rest or health plaintiff has stopped a few days in Washoe County, as well might a resident of another state be taxed on his money and teams if he comes on a visit to remain a week." (Cases cited.)

In

Ex parte White, 228 Fed. 88,  
the court said of a former poll tax law of New Hampshire identical in meaning with the one in this case or reading.

"All male polls from twenty-one to seventy years of age are liable to be taxed, except paupers, insane persons, and others by special provisions of law."

The court says:

"Still, notwithstanding the sweeping terms of the older New Hampshire statutes, if they were the statutes upon which the present rights should depend, it would hardly be urged that they were intended to cover itinerant male persons who happened to be in a given New Hampshire locality on the day on which taxes are required to be assessed, and this without regard to whether they were in the military service or not. The reasonable view would be that the idea of *the right to tax a person presupposes some substantial element of permanency*, and New Hampshire judicial expression, and the judicial reasoning and expression elsewhere, are that way.

The New Hampshire statutory right to tax must, of course, be determined with reference to the constitutional provisions which gives the Legislature power to tax, and thus the statute of 1830 which did not use the constitutional designation of all the inhabitants of and residents within the state, but the designation of each male poll, was construed by the justices, though dealing with a question in respect to aliens, as having reference to the constitutional term inhabitants and residents, as used in their ordinary sense, and not as including all residents."

See also:

Preston v. City of Boston, 12 Pickering 7;  
 Opinions of the Judges, 1 Metcalfe 580;  
 Merrimam v. Stower, 43 Maine 497;  
 Morgan v. Packham, 16 Wallace 471-8-9;  
 Brown v. Maryland, 12 Wheaton 419-447;  
 Metropolitan Life Ins. Co. v. Newark, 62 New  
 Jersey Law 74;  
 State v. Potter, 23 New Jersey Law 517;  
 Board of Assessors v. New Orleans, 216 U. S.  
 517.

The foregoing show that the decisions are uniform to the effect that no part of the United States can tax—non-resident.

---

2.

**NO PART OF THE UNITED STATES CAN LEVY A TAX ON  
 INTERSTATE AND FOREIGN COMMERCE.**

It makes no difference what a tax is called, the question is what pays it? In this case appellant

was engaged in interstate and foreign commerce, his earnings therein paid the tax whether he paid it directly or his employer paid, so it is necessarily a tax on such commerce the law is uniform that such a tax cannot be levied.

Kelley v. Rhodes, 188 U. S. 1, which authority must be taken as the final declaration of the law on Sheep Grazing, we find on page 5 the following:

"The substances of these cases is that, while the property is at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation, but if it be actually in transit to another state, it becomes the subject of interstate commerce and is exempt from local assessment."

Coe v. Erroll says:

"Until actually launched on its way to another state or committed to a common carrier for transportation to such state, its destination is not fixed and certain; it may be sold or otherwise disposed of within the state, and never put in course of transportation."

In the case of Louisiana R. R. Commission v. Texas P. R. R., 229 U. S. 330-341, staves had been cut in Louisiana for shipment to a foreign port and had reached New Orleans. The Supreme Court, on pages 341-342, says:

"The staves and logs were intended by the shippers to be exported to foreign countries, and there was no interruption of their transportation to their destination except what was necessary for trans-shipment at New Orleans."

In the case of *Western Oil Refining Co. v. Lipson*, 244 U. S. 348, a tax was laid upon the privilege of shipping and selling oil. It was called a privilege tax, and it was held that it could not be enforced against those who handled interstate oil.

*Robins v. Shelby Taxing District*, 120 U. S. 489:

494. "In a word, it may be said, that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon the subject. In view of these fundamental principles, which are to govern our decision we may approach the question submitted to us in the present case; and inquire whether it is competent for a state to levy a tax or impose any other restriction upon the citizens or inhabitants of other states, for selling or seeking to sell their goods in such state before they are introduced there. Do not such restrictions affect the very foundation of interstate trade?" \* \* \*

495. "But how is the merchant or manufacturer to secure such orders? If he may be taxed by such states for doing so, who shall limit the tax? *It may amount to prohibition.* To say that such a tax is not a burden upon interstate commerce, is to speak unadvisedly and without due attention to the truth of things."

Page 497. "*Interstate commerce cannot be taxed at all*, even though the amount of the tax should be laid on domestic commerce or that which is carried on solely within the state. This

was decided in the case of the *The State Freight Tax*, 15 Wallace 282."

Stockard v. Morgan, 185 U. S. 27;

Caldwell v. North Carolina, 187 Id. 622;

Dozier v. Alabama, 218 Id. 124;

Stewart v. Michigan, 232 Id. 645.

In the similar case of *Crenshaw v. Arkansas*, 227 U. S. 390, the court says, on page 400:

"We must look, however, to the substance of things, not to the names by which they are labelled, particularly in dealing with rights created and conserved by the Federal Constitution and finding their ultimate protection in the decisions of this court."

It is elementary that tax laws must be strongly construed against the tax, that "a tax on the seller of goods is a tax upon the goods themselves." *Kehrer v. Stewart*, 197 U. S. 60, 65.

This court has also said:

"Of course, the exaction of a license tax as a condition of doing any particular business, is a tax on the occupation, and a tax on the occupation of doing a business is surely a tax on the business. \* \* \* It is a parallel with the case of *Brown v. Maryland*, 12 Wheat, 419. That was a tax on an occupation, and this Court held that it was equivalent to a tax on the business carried on,—(The importation of goods from foreign countries),—and even equivalent to a tax on the imports themselves, and therefore contrary to the clause of the Constitution which prohibited the states from laying any import. \* \* \* 'And the Court decided that this state law (the Maryland land law under consideration in *Brown v. Mary-*

land) was a tax on imports, and the mode of imposing it, by giving it the form of a tax on the occupation of the importer, merely varied the form in which the tax was imposed, without varying the substance'."

Leloup v. Port of Mobile, 127 U. S. 640, 645, 646, 647.

See also:

Welton v. Missouri, 91 U. S. 275, 23 L. ed. 347;

Brown v. Maryland, 12 Wheat 419, 6 L. ed. 678.

---

### 3.

#### **CAN AN INTEGRAL PART OF THE UNITED STATES IMPOSE A SPECIAL BURDEN ON A CITIZEN AND RESIDENT OF ANOTHER PART, NOT IMPOSED ON ITS OWN PEOPLE?**

The Alaska law reads as follows:

Session Laws of Alaska 1921, pages 97 and 99.

97. "Section 1. Any person, firm or corporation prosecuting or attempting to prosecute, any of the following lines of business, or who shall employ and of the following appliances, in the Territory of Alaska, shall apply for and obtain a license and pay for said license, for the respective lines of business and appliances, as follows:

99. "Fishermen who are not residents of the Territory, five dollars (\$5) per annum. The term "fishermen, shall mean to include all persons employed on a boat engaged in fishing."

Section 3, page 105 of the act makes it a misdemeanor to fail to pay the license tax, and Section

11, page 108, requires United States Marshals to enforce the provisions of the act, and says they shall be liable to the Territory for all loss it sustains by reason of their failing to do so. Syb. 1 of Section 2 of Article IV of the Constitution of the United States, reads:

“The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.”

A concern such as appellee was therefore forced to pay the tax under penalty of having its men arrested and its whole venture jeopardized.

In

Ward v. Maryland, 12 Wallace 418,  
the law was:

“37. No person, *not being a permanent resident in this State*, shall sell, offer for sale, or expose for sale, within the limits of the City of Baltimore, any goods, wares, or merchandise whatsoever, other than agricultural products and articles manufactured in the State of Maryland, within the limits of the said City, either by card, sample, or other specimen, or by written or printed trade-lists or catalogue, whether such person be the maker or manufacturer thereof or not *without first obtaining a license*.

38. Such license shall be issued to the person or copartnership applying for the same on the payment of \$300, and shall run one year from date.”

There is no distinction between that language and that of the law involved in this case and this court said on page 429:

“but it is not necessary to decide any of those questions in the case before the court, as the court is unhesitatingly of the opinion that the statute in question is repugnant to the second section of the fourth article of the Constitution, which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States.

\* \* \* \*

Imposed as the exaction is upon persons not permanent residents in the State, it is not possible to deny that the tax is discriminating with any hope that the proposition could be sustained by the court. Few cases have arisen in which this court has found it necessary to apply the guaranty ordained in the clause of the Constitution under consideration.

Attempt will not be made to define the words ‘privileges and immunities’ or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that *the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens”*.

There is no question of the preservation of the fish of Alaska involved, anyone can catch salmon, but if they catch with a line from the shore of a river, or in a seine, or trap, they do not have to



pay a license, if they work for another person, to wit: are

“employed on a boat engaged in fishing”,  
and are non-residents they must pay \$5.00 per year.

Geer v. Connecticut, 161 U. S. 519,  
does not control this case. It appears that in that case the law was aimed at game to be consumed in the state, was intrastate commerce not interstate. This court says on page 531:

“So, again, in the Daniel Ball, 10 Wall. 557, 564, this court, speaking through Mr. Justice Field, said:

‘There is undoubtedly an internal commerce which is subject to the control of the States. The power delegated to Congress is limited to commerce “among the several States”, with foreign nations and with the Indian tribes. This limitation necessarily excludes from the Federal control, commerce not thus designated, and of course, that commerce which is carried on entirely within the limits of a State, and does not exceed to or affect other States.’

The fact that internal commerce may be distinct from interstate commerce, destroys the whole theory upon which the argument of the plaintiff in error proceeds. The power of the State to control the killing of and ownership in game being admitted, the commerce in game, which the state law permitted, *was necessarily only internal commerce*, since the restriction that it should not become the subject of external commerce went along with the grant and was a part of it. All ownership in game killed within the State came under this condition, which the State had the lawful authority to impose, and no contracts made in relation to such property and that of the law involved in this case and this court said on page 429:

erty were exempt from the law of the State consenting that such contracts be made, *provided only they were confined to internal and did not extend to external commerce.*"

If Alaska desired to preserve the fish within its territorial limits for the use of its own citizens, that would be one thing. This case presents another question, it permits anyone to take salmon for any purpose, but discriminates between residents and non-residents in a matter in which interstate and foreign commerce alone is involved.

---

4.

**THE DEDUCTION OF THIS TAX FROM APPELLANT'S WAGES IN  
SAN FRANCISCO, WAS UNLAWFUL.**

Appellant is a California corporation. It could not at any time be present in Alaska. It might have an agent there, but as to itself it could be present nowhere but in California.

The contract of hiring in this case was made in California. It was an entire contract and was only fully performed when those who signed it returned to this state. None of the earnings were payable except in San Francisco, with the exception of \$10.00 and that only after they had left Alaska.

This court has decided squarely that a state cannot tax or affect a contract payable in another territory.

State Tax on Foreign-Held Bonds, 15 Wallace 300:

Syllabus: "The tax laws of a state have no extra-territorial operation, nor can any law of a state inconsistent with the terms of a contract, made or payable to parties out of the state, have any effect upon the contract whilst it is in the hands of such parties or other non-residents of the state."

Appellant was entirely without authority to pay the amount in question in this case. As to Alaska itself, it was without power to make or require appellant to pay money in Alaska on account of another person when it owed him nothing, and might never owe him anything. A breach of the contract by any of its employees would have forfeited all right to pay in San Francisco. No one can be made to pay money on account of another, either in advance of the time he owes the money, or when he may be in such a position as to leave it in doubt that he may ever owe him anything, and a demand for the payment of an Alaska tax made in San Francisco has no effect whatever.

---

5.

**THE SCHOOL OR POLL TAX IN THIS INSTANCE OPERATED IN THE CASE OF LIBELANT AS A TAX FOR THE PRIVILEGE OF ENTERING ALASKA.**

One part of the law reads, in so far as applicable to the appellant, page 74 of the Session Laws of Alaska, 1919:

\* \* \* "and all persons arriving in the Territory of Alaska after the first Monday in the

month of April shall pay said tax within thirty (30) days after such arrival."\* \* \*

The law meaning April in each year.

The case of *Crandall v. the State of Nevada*, 73 U. S. 35, decides squarely against the right of a locality to enforce such a law against a non-resident. In that case the State of Nevada levied a capitation tax upon every person leaving the state, by any railroad, stage coach, or other vehicle, etc.

The tax was levied upon the carrier, this court said that made no difference as he would add it to the fare, and the burden would fall upon the passenger, the only difference between that case and this, is that here the men left the Territory at the same locality they entered it. We think that would make the presumption stronger against this tax, nor can we think that fact would affect the principles involved, as in the *Crandall* case, if a passenger went from California to Nevada and entered that state at the state line and went from there to Reno or elsewhere and desired to return to California, he would have to return by the ordinary lines of travel and leave the state at exactly the same place that he entered. However, the tax would have to be paid.

The court, speaking through Mr. Justice Miller, says on page 38:

"The question for the first time presented to the Court by this record is one of importance. The proposition to be considered is the right of a state to levy a tax upon persons residing in the state who may wish to get out of it, and upon

persons not residing in it who may have occasion to pass through it."

As to the latter class mentioned it is purely a case of whether permanency of residence was intended.

This court further says on page 44:

"But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claims he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. *He has a right to free access to its seaports, through which all the operations of foreign trade and commerce are conducted*, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several states, and this right is independent of the will of any state over whose soil he may pass in the exercise of it."

We submit that the men in this case had a right to free access to the seaports of Alaska in the operation of interstate or foreign trade and commerce. This court then quoting from dissenting opinion of Chief Justice Taney in the passenger cases, his dissent being upon the ground that a state had the right to levy a tax upon a person coming from a foreign country, but not one entering from another state or territory. Page 49 of the Crandall case, says:

"We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our

own states. *And a tax imposed by a state, for entering its territories or harbors, is inconsistent with the rights which belong to citizens of other states as members of the Union, and with the objects which that Union was intended to attain. Such a power in the states could produce nothing but discord and mutual irritation, and they clearly do not possess it.*"

If the Territory of Alaska had the power to collect \$5.00 in this instance they would have the right to collect a tax of \$1000.00 and thus effectually destroy all commerce between itself and other localities. They could by such actions effectually prevent any member of the community of the United States or elsewhere from visiting its territory at all, and thus enjoy the privileges, whatever they may be, that presence in Alaska may bring to the exclusion of the whole world, while the rest of the world would not so deny such privileges to those permanently domiciled in Alaska. We submit that no locality has it within its power to thus restrict trade and commerce between the territory controlled by the United States, or between that territory and foreign countries.

The case of *State Treasurer v. P. M. B. R. R. Co.*, 4 Houston (Del.) 158, is similar to the *Crandall* case.

The court says in that case on page 199:

"and under the authority of the Nevada case we must hold it to be inoperative and void, so far as it affects passengers entering into, departing from, or passing through the state."

We can see no distinction between a passenger "entering into a state" and a seaman doing likewise.

**THE LAW TAXING NON-RESIDENT FISHERMEN WAS IN VIOLATION OF A PART OF SECTION 9 OF THE ORGANIC ACT OF ALASKA.**

A part of said Section 9 reads:

“nor shall the lands *or other property* of non-residents be taxed higher than the land *or other property* of residents.”

Appellant had a property right in the right to go to Alaska and fish; this right was taxed, when residents were not taxed, in plain violation of the above language.

Chapter 818 of the Acts of Congress for the year 1886 was a general law for all Territories, and prohibited the passage of special laws by a Territory, and is to the effect that no territory shall pass special or local laws \* \* \*

“for the assessment and collection of taxes for Territorial, county or road purposes.”

This law in so far as pertinent, reads as follows:  
Page 99, Session Laws of Alaska:

(d) Salteris. Ten cents per one hundred pounds on mild-cured red king salmon; five (5) cents per one hundred pounds on mild-cured white king salmon; ten (10) cents per one hundred pounds on salted codfish; two and one-half ( $2\frac{1}{2}$ ) cents per one hundred pounds on all other salted and mild-cured fish.

(3) Fish traps, fixed or floating, two hundred dollars (\$200) per annum, so-called dummy traps included.

(f) Gill nets and stake nets, two dollars (\$2) per one hundred fathoms, or fraction thereof.

(g) Seines, ten dollars (\$10) for the first one hundred and fifty fathoms, and five dollars (\$5) additional for each twenty-five additional fathoms, or fraction thereof.

Residents and non-residents are on equal terms in all of the foregoing undertakings, but the clause objected to follows, reading:

(h) Fishermen who are not residents of the Territory, five dollars (\$5) per annum. The term 'fishermen' shall mean to include all persons *employed* on a boat engaged in fishing."

If he is not employed, but works for himself, he does not pay any license tax, whether he is a resident or non-resident.

The law complained of is clearly special taxation.

---

**REVIEW OF THE DECISION OF THE COURT IN THE CASE OF  
ALASKA PACKERS ASSOCIATION v. JOHN HEDENSKOY,  
267 Fed. 154.**

One of the questions involved was before the learned Circuit Court of Appeals for the Ninth Circuit, in the above cause, to-wit, that of the right to tax a non-resident, and the decision of that court was that Alaska could levy the poll tax upon a fisherman but temporarily in Alaska in the course of trade and commerce, it saying:

"It is well established that taxation of personal property *which may be temporarily within a state for profit is lawful* although the owner has his domicile within another state."



We respectfully submit that that is not the law, and the principle there declared is in direct conflict with the decisions of this court on the same subject.

One decision cited in the court's opinion does seem to go to that length, that of

Fennell v. Pauly, 83 Northwestern 799.

In that case, decided in the year 1900, sheep had been taken into the state in December, 1895, and staid there until April, 1896, and it was held they were liable to taxation.

Uniformity of legal principles is always sought. States can, and do, vary between each other in decisions, but Federal courts have no justification for such variance.

The above case, however, stands alone in its doctrine. Each other state deciding upon the same subject has invariably based the taxing power upon the assumption of *permanency of situs*.

In Grigsby Construction Company v. Freeman, also cited in this court's opinion, 32 Southern 399, the court says, page 401:

"In the instant case the property was not in course of transportation but was here for use, *and for a use likely to be of some duration, possibly a full year*,—and for the time being was incorporated in the bulk of the property of the state. It was distinguishable from the rest of the property of the taxing district in no respect except in the intention of the owner to remove it at some future time more or less distant. *Under these circumstances, its situs approached nearer to permanency than did that*

of the sheep in the Wyoming case, or that of the coal in the Brown v. Houston case."

The application of the facts of that case under that language to this is impossible, as that court says itself that the right to taxation in that case is based upon probable permanency of *situs*, at least for a full taxing year.

In this case appellant went to Alaska in a ship that he contracted to return in; the ship went for a cargo to bring down with the men. The only element there was in the case, was the certainty that permanency of *situs* did not exist. There was no room for even speculation that it did.

We find exactly the same condition of permanency in the case of Eoff v. Kennefickers Tax Collector, 96 S. W. 986, also cited in the court's opinion. In that case the court says on page 986:

"This property was situated in Boone County on the first Monday in June, 1903, how long before and how long after does not appear. \* \* \*

How long it required to complete the roadbed was not shown at the hearing of this cause."

The court in that case could not take judicial knowledge that the roadbed would be completed in one or ten taxing years, and had a right to assume that the property would receive at least a taxing year's protection. If the property is but temporarily in the taxing district, as these men were, the decisions of this court are uniform, that if taxed at any place but the domicile of the owner

*it is the taking of property without due process of law.*

In the case of *Brown v. Houston*, 114 U. S., 622, the sole question involved was interstate commerce. Coal had been shipped to New Orleans to be sold to anyone that saw fit to purchase it for use in Louisiana or elsewhere, as suited the purchaser. This court decided that it had reached its final destination when it reached New Orleans and had become a part of the property of the State of Louisiana, saying on pages 632-33:

“It (the tax) was imposed after the coal had arrived at its destination and was put up for sale. The coal had come *to its place* of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years, or only for a day. *It had become a part of the general mass of property in the State, and as such* it was taxed for the current year (1880) as all other property in the City of New Orleans was taxed.”

The very element of permanency was there established by this court, and it was upon that the case was decided. The coal would never leave except to be consumed, and all of it might be consumed in the State. There is a wide distinction, in fact no similarity, between that case and this.

If one court decides that three months is a proper taxable presence, another may decide that three days is, and eventually the Territory of Alaska might decide that no presence at all was necessary. They

are now collecting poll tax from sailors that go into the Territory and never leave their vessels, we are informed.

In the later case of

Pullman's Car Company v. Pennsylvania,  
141 U. S. 18,

decided May, 1891, the decision of this court is based entirely upon the following language, page 26:

"The route over which the cars travel extending beyond the limits of the State, particular cars may not remain within the State; but the company *had at all times* substantially the same number of cars within the State, *and continuously and constantly* uses there a portion of its property; and it is distinctly found, as a matter of fact, that the company *continuously*, throughout the periods for which these taxes were, carried on business in Pennsylvania, *and had about one hundred cars* within the State."

It was upon the fact of the continuous presence of one hundred cars in the State that the tax was supported. That the cars may have been different at times would be immaterial, and again that was a Pennsylvania corporation endeavoring to escape taxation upon the theory that its property in Pennsylvania was used in interstate commerce. What it had permanently in the State was held liable to taxation, the syllabus reading, in part,

"and having *at all times* a large number of such cars within the State".

If the foregoing language was not clear, we submit this court has made it clear in the subsequent

case of *Union Transit Co. v. Kentucky*, 199 U. S. 194 (decided November, 1905), at page 206:

"The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. The fact that such property is visible, easily found and difficult to conceal, and the tax readily collectible, is so cogent an argument for its taxation at its *situs*, that of late there is a general consensus of opinion *that it is taxable in the State where it is permanently located and employed* and where it *receives its entire protection*, irrespective of the domicile of the owner. We have, ourselves, held in a number of cases that such property *permanently located* in a State other than that of its owner is taxable there. (Several cases cited, among them being 141 U. S. 18.) We have also held that, if a corporation be engaged in running railroad cars into, through and out of the State, and having at *all times* a large number of cars within the State, it may be taxed by taking as the basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars are run within the State bears to the whole number of miles in all the States over which its cars are run. *Pullman's Car Co. v. Pennsylvania*, 141 U. S. 18."

Alaska was not in a position to furnish schools for appellant in Alaska, his children were in California, appellant owed Alaska no allegiance, he owed it where he lived; he, under any construction that can possibly be given to any law, would have a right to show in court, all of the things above mentioned by this court before any of his money was taken to pay the tax, and in addition, under the laws of Alaska itself would have the right to show many things, among them being,

that he was over fifty-five years old, that he had already paid the tax, that he was under twenty-one years old, that he was a soldier under leave of absence, that he was a volunteer fireman, or that he was insane, all of those are exemptions under Section 1 of the law in question. Still under this law of Alaska, it can force a payment by seizing the employer's property, without any right of hearing on the part of the employee.

But under the decision of the court of appeals, the employer is given the right to disburse the employee's money, whether the employee owes it or not; that is not due process of law.

Of course, if the Territory of Alaska can tax a nonresident, every other part of the United States can do the same; if all should do it, a person could be taxed in every county and State he passed through if he left his domicile. It was to prevent that the courts have decided the way they have on the subject.

We, for the foregoing reasons, respectfully submit that the learned District Court for the Northern District of California, erred in sustaining the exceptions to appellant's libel, and pray that this court will reverse the decree rendered herein, and direct such further proceedings as the law and facts warrant.

Dated, San Francisco,  
February 24, 1923.

Respectfully submitted,

H. W. HUTTON,

*Attorney for Appellant.*

OCTOBER 1972

SVEN HAAVIE

Appellant

ALASKA PACKERS ASSOCIATION

Appellee

BRIEF OF APPEAL

JOHN EDWARDS

Attorney General

Attorney General of Alaska

Attorney for Appellee

IN THE  
SUPREME COURT OF THE  
UNITED STATES

---

OCTOBER TERM, 1922

---

SVEN HAAVIK,

*Appellant,*

VS.

ALASKA PACKERS ASSOCIATION,

*Appellee.*

NO.  
627

---

BRIEF OF APPELLEE

---

STATEMENT OF CASE.

The statement of facts set out in appellant's brief will be accepted as substantially correct for the purpose of this appeal.

There are four questions presented:

1. Is the Alaska poll tax law of 1919 in conflict with the Federal Constitution?



2. Is that Act in conflict with the Organic Act of the Territory, to-wit, the Act of August 24, 1912, creating a legislative assembly for the Territory?
3. Is a license tax imposed upon non-resident fishermen in conflict with the Federal Constitution?
4. Is that Act in conflict with the Organic Act of the Territory?

## ARGUMENT

### THE POLL TAX LAW.

#### I.

Counsel for appellant does not point out the particular clauses of the Federal Constitution which he claims are violated by the poll tax law in question, but there are expressions in his brief intimating that in counsel's opinion the poll tax law violates that part of the Fourteenth Amendment to the Constitution which provides that:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

He also urges that the poll tax law interferes with interstate commerce and, as such, trenches upon the exclusive authority of Congress over that subject.

## A.

So far as the Fourteenth Amendment is concerned it may be pointed out that it is not addressed to either Federal Government or the Territorial Government. It is expressly designed to be a limitation upon the authority of the sovereign states.

*Territory of Alaska vs. Troy*, 258 U. S. 101.

Even if this were not so, it could not be said that the poll tax law in question deprives any person of property without due process of law. The cases relied upon by counsel are merely to the point that the state or municipality can not levy a tax upon property over which such state or municipality has no jurisdiction. On what theory of law can it be contended that the legislature of Alaska has no jurisdiction over persons within the boundaries of the Territory?

The power of Congress over the Territory is plenary.

*Binns vs. U. S.* 194 U. S. 486.

*National Bank vs. Yankton County*, 101 U. S. 129.

The jurisdiction of the local legislature is co-extensive with that power to the extent delegated. Anyone entering the Territory subjects himself to that jurisdiction, and, assuming that Congress has delegated to the Territory the proper powers, a poll tax might be levied upon any individual in the Ter-

ritory so long as such law or tax did not violate any provision of the Federal Constitution limiting the power of Congress in dealing with the Territory.

*Talbott vs. Silver Bow County*, 139 U. S. 438.

## B.

In the fact that the salmon caught by appellant was intended for exportation counsel finds his reason for asserting that the poll tax law is an interference with interstate commerce.

If this doctrine be accepted by the Court it will give the Federal Government jurisdiction over all industries whether manufacturing, mining, forestry or agriculture, because all that is produced or manufactured, is intended for exportation or to take its place in one form or another in interstate commerce.

The question here raised by counsel has been fully disposed of heretofore by this Court.

*Oliver Iron Co. vs. Lord*, decided May 7th 1923.

*Heisler vs. Thos. Colliery Co. et al*, 260 U. S.

*Geer vs. Connecticut*, 161 U. S. 519.

## II.

The question of whether or not Congress had delegated to the legislature authority to enact the law in question was settled by the United States Circuit Court of Appeals for the Ninth Circuit in *Alaska*

*Packer*  
In that  
had the  
tion wa  
to spen  
pose of

Un  
this Co  
structio  
dollars  
especial  
plication  
case.

Th  
the legi  
ple who  
people  
purpose  
connect  
men co  
when th  
North.  
on the v  
and the  
fact tha  
parts of  
the Ter  
to the c

*Packers Association vs. Hedenskoy* 267 Fed. 154.  
 In that case it was held not only that the Territory  
 was the proper authority but that the law in ques-  
 tion was properly applied to fishermen who came  
 to spend the summer in the Territory for the pur-  
 pose of fishing.

Under the circumstances, it is not likely that  
 the Court will review the correctness of that con-  
 clusion in any case involving no more than five  
 years and which raises no constitutional problem,  
 especially as this court has already denied an ap-  
 plication for a writ of certiorari in the *Hedenskoy*

*Hedenskoy vs. Alaska Packers Assn.*, 254  
 U. S. 652.

The question in this case is not whether or not  
 the legislature has authority to levy a tax upon peo-  
 ple who merely pass through the Territory or on  
 people who come to the Territory merely for the  
 purpose of transitory commercial enterprises in  
 connection with interstate commerce. The fisher-  
 men come to spend the entire summer season, and,  
 when there, are a part of the industrial life of the  
 Territory. They remain for the fishing season to carry  
 on the work in the main industries of the Territory,  
 and the question is whether or not, by reason of the  
 fact that they maintain their homes in some other  
 part of the world, where they spend their winters,  
 the Territory is deprived of jurisdiction over them  
 to the extent of forcing them to contribute some-

thing to the maintenance of those institutions erected and maintained for their protection.

The facts which give to a state taxing jurisdiction over property are sufficient to give taxing jurisdiction over persons.

*Alaska Packers Association vs. Hedenskoy*  
267 Fed. 154.

*Fennell vs. Pauly*, 83 N. W. 799.

*Maurer vs. Cliff*, 94 Mich. 194 (53 N. W. 1055).

This court has recognized the doctrine that for the purpose of taxation the question is whether or not the property is only in transitu.

*Kelley vs. Rhoads*, 188 U. S. 1;

*Brown vs. Huston*, 114 U. S. 633;

*Pullman Car Co. vs. Penn.* 141 U. S. 18.

This Court has held that the taxing power of a territory is limited only by the provisions of the Federal Constitution applicable to the territory and by the express limitations of the Organic Act creating the legislative assembly.

*Talbott vs. Silver Bow County*, 139 U. S. 438.

In the Talbott case it was held that the doctrine of *McCullough vs. Maryland* 17 U. S. 316 does not limit the power of a territory and that the taxing power of the latter, to that extent, is greater than that of a state.

The authority to levy a poll tax upon all the people within the Territory, whether actual resi-

dents or not, has been exercised by the Legislature of the Territory of Alaska from the time of the first session. The Act creating the legislature was approved August 24, 1912. The first session of the legislature convened in March, 1913, and by May 1 it had enacted Chapter 54 of the Laws of 1913 imposing "a poll tax upon each male person \* \* \* within the Territory of Alaska or the waters thereof."

That law, to be sure, was held void by the United States Circuit Court of Appeals for the Ninth Circuit because it made the United States Commissioners the tax collectors, in violation of the Organic Act.

*Callaham vs. Marshall*, 210 Fed. 230.

To cure this defect in the Organic Act and to authorize the Territory to exercise the power it assumed, Congress passed an Act, approved August 29, 1914, entitled "An Act to amend an Act entitled 'An Act creating a legislative assembly in the Territory of Alaska, and conferring legislative power thereon, and for other purposes' approved August 24, 1912."

The present poll tax law was certified to Congress as required by the Organic Act. It was held valid as to non-resident fishermen in the Hedenskoy case, and Congress has made no move to repeal it or disapprove it. Under the circumstances it



will be assumed that the practical interpretation placed upon the Organic Act is ratified by Congress.

*Clinton vs. Englebrecht*, 13 Wall 434. (446)

### III.

#### LICENSE TAX ON NON-RESIDENT FISHERMEN.

Counsel urges that the license tax on non-resident fishermen is in conflict with that part of the Federal Constitution which provides that "citizens of each state shall be entitled to all the privilege and immunities of the citizens of the several states."

But it will be observed that the discrimination complained of is not a discrimination between citizens of various states. If a discrimination is to be found it is in favor of the citizens of a territory and against the citizens of all the states. All the states are placed on the same footing. There is no constitutional objection to such discrimination, and there is nothing in the Constitution to prohibit a state or the Federal Government from discrimination against citizens of a territory and in favor of citizens of a state.

This feature of the Constitution was called to the Court's attention in the *Troy* case, where the Territory complained that the Merchant Marine Act discriminated against citizens of the Territory and in favor of citizens of the states. This Court

replied that this provision did not protect the citizens of the Territory against such discrimination, because the term "states" when used in the Constitution precluded the idea of a territory.

*Territory of Alaska vs. Troy*, 258 U. S. 101;

*McFadden vs. Blocker*, 3 Indian Territory 277; (58 L. R. A. 894).

*Sutton vs. Hayes*, 17 Ark. 462.

*Tiger vs. Western Investment Co.*, 221 U. S. 286.

But, even were not this so, the doctrine would not apply to this case, for the fish and game within the Territory belong to the citizens of the Territory and need not be shared with the citizens of other states or territories. This being so, the citizens of one state have no property right in the fisheries of another state.

Laws have been frequently enacted in various jurisdictions relative to hunting and fishing which discriminate against citizens of other states. These laws have been held consonant with the Constitution of the United States for the reasons above stated.

*McCready vs. Virginia*, 94 U. S. 391 (24 L. Ed. 248);

*Curfield vs. Coryell*, 4 Wash. (U. S.) 371, (6 Fed. Cs. 3231);

*Bennett vs. Boggs*, 3 Fed. Cs. 1319;

*State vs. Medbury*, 3 R. I. 141;

*State vs. Corson*, 67 N. J. L. 185;



- Haney vs. Compton*, 36 N. J. L. 509;  
*State vs. Smith*, 71 Ark. 478;  
*Ex parte Gilletti*, 70 Fla. 442, (70 S. 446);  
*Mens vs. People*, 198 Ill. 258 (64 N. E. 1106);  
*State vs. Leavitt*, 105 Me. 76 (72 Atl. 875);  
*Allen vs. Wyckoff*, 48 N. J. L. 90 (57 Am. Rep. 548);  
*State vs. Nüe*, 78 Vt. 266 (62 Atl. 795);  
*Geer vs. Connecticut*, 161 U. S. 519;  
*Patson vs. Pennsylvania*, 232 U. S. 138.

The courts have approved of the power which the legislature of Alaska has exercised over fisheries.

In the case of *Alaska Fish Salting & By-Products Company vs. Smith*, 255 U. S. 44, this court held that the legislature had authority to prohibit the catching of herring for rendition into oil and fertilizers, and to do so by the taxing power. That authority has been exercised by the legislature from the time of its first session and had met with no disapproval at the capital of the country. That power, too, must therefore be construed as having been ratified, in the event it should be found that it has not been expressly conferred upon the legislature. Should there be any doubt on the subject of the authority of the legislature a reference to the debates on the floor of the House at the time the Organic Act was passed will show very clearly that it was the intent of Congress to give the legislature

full authority to enact laws regulating the fisheries, so long as those laws did not conflict with the statutes on that subject already enacted by Congress.

Respectfully submitted,

JOHN RUSTGARD,

Attorney General of Alaska,  
Attorney for Appellee.

FILED

OCT 27 1923

WM. R. STANSBURY  
CLERK

# In the Supreme Court

OF THE  
United States

IN ADMIRALTY

---

OCTOBER TERM, 1923

---

No. 128

---

SVEN HAAVIK,

vs.

ALASKA PACKERS ASSOCIATION,

*Appellant,*

*Appellee.*

APPELLANT'S REPLY BRIEF.

---

H. W. HUTTON,

Pacific Building, San Francisco,

*Attorney for Appellant.*



# In the Supreme Court

OF THE

United States

IN ADMIRALTY

---

OCTOBER TERM, 1923

---

No. 128

---

SVEN HAAVIK,

*Appellant,*

VS.

ALASKA PACKERS ASSOCIATION,

*Appellee.*

---

## APPELLANT'S REPLY BRIEF.

---

Appellant respectfully requests consideration of the following reply brief, the italics in which are the writer's.

### I.

#### TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

Counsel for appellee overlooked the Fifth Amendment to the Constitution, the terms of which are of general application and which reads:

“Section 1. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment

of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; *nor be deprived of* life, liberty, or *property*, without due process of law; nor shall private property be taken for public use without just compensation."

That section and the decisions of this court and all other laws applicable are operative in Alaska under the following language in its organic act, to-wit:

"Sec. 3. That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the territory as elsewhere in the United States." \* \* \*

"Sec. 9. The legislative power of the Territory shall extend to all rightful subjects of legislation *not inconsistent with the* Constitution and laws of the United States." \* \* \*

If the Fourteenth Amendment to the Constitution of the United States is not operative in Alaska, the Fifth Amendment is, and we asserted the claim in our brief that the taxing of a non-resident is the taking of property without due process of law, and that no taxing locality has the jurisdiction to so tax, because this court has repeatedly said so.

We again call the court's attention to the following language on page 10 of our brief, quoted from

Union Transit Company v. Kentucky, 199  
U. S. 202.

"The power of taxation, indispensable to the existence of every government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property or in the creation and maintenance of public conveniences in which he shares, such, for instance, as roads, bridges, sidewalks, pavements, and schools for the education of his children. *If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another State, to which it may be said to owe an allegiance and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, and has been repeatedly held by this court to be beyond the power of the legislature and a taking of property without due process of law.*" (Several authorities cited.)

And also to the several other authorities we cited to the same point. The question in this case is, whether the mere temporary presence of a person for the purposes of trade and commerce within a given locality gives such person a taxable status. The decisions are practically uniform that it does

not; it is not the power to pass a given law that is involved in this case, but the question of the operation of the law on persons who have always for wise purposes been held not subject to such laws.

Of course if Alaska is not a territory of the United States, and not subject to the Constitution and laws of the United States, then the argument of counsel for appellee is applicable; if, on the contrary, Alaska is subject to the Constitution and laws of the United States it cannot be applicable.

If the District of Columbia should undertake to collect a poll-tax from an attorney that went to Washington to argue a case before this Honorable court, there is no question this court would hold such an attempt void, and we cannot see any difference between such a state of facts and the facts of this case.

And as to counsel's reference to the Hedenskoy case, we can simply call this court's attention to the fact that that case holds that both a non-resident and his property are taxable, as does *Fennell v. Pauly*, cited therein, and several hundred other decisions in the United States, and several of this court hold that it and he is not taxable. The decision being contrary to the overwhelming mass of authority it ought not to be sustained.



## II.

## SUBDIVISION 10F, SEC. 2 OF ART. IV OF THE CONSTITUTION.

As to the application of sub. 1 of Section 2 of Art. IV of the Constitution to this case, it reading:

“The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.”

We can see no distinction at all between this case and the following authorities, to-wit:

Stoutenburgh v. Hennick, 129 U. S. 141;

Hanley v. Kansas City Southern Ry. Co., 187 U. S. 617.

We have already called the court's attention to the following language in the organic law of Alaska:

“Sec. 3. That the Constitution of the United States, \* \* \* shall have the same force and effect within said Territory as elsewhere in the United States, \* \* \*”

That means the whole of the Constitution, not such parts as Alaska wishes to pick out or disregard as being favorable or unfavorable to it, and the following is the law as decided by this court on a similar matter,

Talbott v. Silver Bow County, 139 U. S. 438-444.

“Still further, while the word State is often used in contradistinction to Territories yet in its general public sense, and as sometimes used in the statutes and the proceedings of the gov-

ernment, it has the larger meaning of any separate political community, including the District of Columbia and the Territories, as well as those political communities known as States of the Union. Such a use of the word State has been recognized by the decisions of this court, \* \* \*

In that case States were allowed to tax bank stock, and it was held by this court that the word State included "Territories". But, irrespective of all that, the law complained of reads:

"Fishermen who are not residents of the Territory, five dollars (\$5) per annum. The term 'fishermen' shall mean to include all persons employed on a boat engaged in fishing."

If there is a fishing boat, the person owning the boat has a property right in the right to use it in fishing. If the owner of the boat is a resident of Alaska he can use his boat without this tax; if he is not he cannot. The property right of the non-resident is thus taxed and the property right of the resident is not taxed, clearly contrary to the following language in Sec. 9 of the organic act of Alaska.

"nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents."

And counsel for appellee has utterly failed to show that the above mentioned section of the Constitution does not apply in Alaska.

The provision in Alaska's organic act giving it the right to impose "other and additional taxes or

licenses", does not give the legislature the right to impose unconstitutional taxes or licenses, nor does it give a right to tax interstate and foreign commerce as both of these taxes do.

It will be remembered that the primary purpose of the venture in this case was to obtain fish to be used in the States of the United States outside of Alaska, and foreign countries, the vessel on which appellant was employed left San Francisco for that purpose. Defendant, the operator of the vessel, was a corporation foreign to Alaska; it furnished and carried to Alaska everything necessary to can the salmon except the salmon, even to the food of the men. The river in Alaska was the spawning ground of the salmon, and when the salmon went in to spawn the fishing commenced and when canned the salmon was the property of a non-resident and never had a taxable situs in Alaska, on the contrary, everything connected with it was transitory, so there is no resemblance between this case and the cases of *Oliver Iron Co. v. Lord*, and *Heisler v. Thos. Colliery Co.*, cited in appellant's brief. Both of those cases were mining cases. Mining is not necessarily interstate commerce. The fishing business herein was interstate and foreign commerce from its inception, and again we have the additional matter that appellant was a non-resident and under the decisions was not taxable at all.

Counsel for appellee mentions the plenary power of Congress over the Territories, but the

decisions he cites state that such power is controlled by the provisions of the Constitution, as necessarily it must be, but Congress did not pass either of the laws complained of here. If it had they would be equally unconstitutional. Appellant herein did not spend the whole of the summer in Alaska, but what period he did spend there was transitory, never fixed, always with the intention of leaving as soon as his interstate and foreign commerce engagement was ready to be continued by his leaving Alaska, and his taxable allegiance was at all times solely with the State of California.

We respectfully submit that both of the taxes in this instance are void.

Dated, San Francisco,  
October 15, 1923.

H. W. HUTTON,  
*Attorney for Appellant.*

## HAAVIK v. ALASKA PACKERS ASSOCIATION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 128. Argued November 15, 1923.—Decided January 7, 1924.

1. An annual poll tax, and an annual license imposed only on non-resident fishermen within Alaska, are within the power delegated to the Alaska legislature by the Organic Act. P. 514.
2. These taxes, as applied to a citizen of California who went to Alaska to engage in the business of fishing and remained there, so engaged, for four months, are not in conflict with the due process clause of the Fifth Amendment. *Id.*
3. Nor does the license tax, confined to non-residents, violate the "privileges and immunities" provision (Const., Art. IV, § 2.); nor was it arbitrary or unreasonable to favor local residents by exempting them from it. P. 515.

Affirmed.

APPEAL from a decree of the District Court, dismissing a libel brought by the appellant to recover the sum of ten dollars, claimed to be due him from the appellee, as part of his wages as a fisherman. The appellee had paid that sum to discharge the taxes laid on the appellant in Alaska, the constitutionality of which the appellant disputed.

*Mr. H. W. Hutton* for appellant.

No part of the United States can tax a resident of another part who is but temporarily in the taxing part for the purposes of trade and business. *Union Transit Co. v. Kentucky*, 199 U. S. 202; *St. Louis v. Ferry Co.*, 11 Wall. 423; *Hays v. Pacific Mail S. S. Co.*, 17 How. 596; *Dewey v. Des Moines*, 173 U. S. 193; *State Tax on Foreign-Held Bonds*, 15 Wall. 321; *Passenger Cases*, 7 How. 283; *On Yuen Hai Co. v. Ross*, 8 Sawy. 384; *Desty, Taxation*, p. 296; *Short v. State*, 80 Md. 392; *Wharton, Conflict of Laws*, §§ 47-81; *Story, Conflict of Laws*, § 43; *Oakland v. Whipple*, 39 Cal. 112; *People v. Niles*, 35 Cal. 282; *People v. Townsend*, 56 Cal. 633;

*Robinson v. Langley*, 18 Nev. 71; *Ex parte White*, 228 Fed. 88.

No part of the United States can levy a tax on interstate and foreign commerce. *Kelley v. Rhoads*, 188 U. S. 1; *Louisiana R. R. Comm. v. Texas Pac. Ry. Co.*, 229 U. S. 330; *Western Oil Co. v. Lipscomb*, 244 U. S. 346; and other cases.

Can an integral part of the United States impose a special burden on a citizen and resident of another part, not imposed on its own people? *Ward v. Maryland*, 12 Wall. 418. *Geer v. Connecticut*, 161 U. S. 519, distinguished. Alaska permits anyone to take salmon for any purpose, but discriminates between residents and non-residents in a matter in which interstate and foreign commerce alone is involved.

The deduction of this tax from appellant's wages in San Francisco, was unlawful. Appellee is a California corporation. It could not at any time be present in Alaska. The contract of hiring was made in California. It was an entire contract and was only fully performed when those who signed it returned to this State. The earnings were payable only in San Francisco, except \$10.00 payable after leaving Alaska.

A State cannot tax or affect a contract payable in another Territory. *State Tax on Foreign-Held Bonds*, 15 Wall. 300.

The school or poll tax in this instance operated in the case of libellant as a tax for the privilege of entering Alaska. *Crandall v. Nevada*, 6 Wall. 35; *State Treasurer v. P. M. B. R. R. Co.*, 4 Houston, 158.

The law taxing non-resident fishermen violated § 9 of the Organic Act of Alaska, providing: "nor shall the lands or other property of non-residents be taxed higher than the land or other property of residents." Appellant had property in the right to go to Alaska and fish.

The Act of July 30, 1886, c. 818, 24 Stat. 170, was a general law for all Territories, and prohibited the pas-

sage of special laws "for the assessment and collection of taxes for Territorial, county, township, or road purposes."

If the fisherman is not "employed", but works for himself, he does not pay the license tax, whether a resident or non-resident. The tax is special taxation.

If the District of Columbia should undertake to collect a poll tax from an attorney who went to Washington to argue a case before this Court, would not this Court hold the attempt void?

Art. IV of the Constitution declares: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." *Stoutenburgh v. Hennick*, 129 U. S. 141; *Hanley v. Kansas City Southern Ry. Co.*, 187 U. S. 617; and the organic law of Alaska: "Sec. 3. That the Constitution of the United States . . . shall have the same force and effect within said Territory as elsewhere in the United States, . . ."

"While the word State is often used in contradistinction to Territory yet in its general public sense, and as sometimes used in the statutes and the proceedings of the government, it has the larger meaning of any separate political community, including therein the District of Columbia and the Territories, as well as those political communities known as States of the Union. Such a use of the word State has been recognized in the decisions of this court." *Talbott v. Silver Bow County*, 139 U. S. 438-444.

The resident owner of a fishing boat can use it without this tax. The property right of the non-resident owner is thus discriminated against, contrary to § 9 of the Organic Act.

*Mr. John Rustgard*, Attorney General of Alaska, for appellee.



MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Appellant challenges the validity of the Act of the Alaska Legislature approved May 1, 1919 (c. 29, Session Laws 1919), which imposes upon each male person, with certain exceptions, within the territory or the waters thereof an annual poll tax of five dollars to be used for school purposes; and also that portion of the Act of the same Legislature approved May 5, 1921 (c. 31, Session Laws 1921), which imposes an annual license tax of five dollars upon every non-resident fisherman—the term “to include all persons employed on a boat engaged in fishing.”

Congress established an organized government for Alaska by the Act of August 24, 1912, c. 387, 37 Stat. 512. It declares that “the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States.” It also created a Legislature with power and authority, which “shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States,” subject to specified restrictions. One of them is this—“nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents.”

While residing in California appellant was employed by appellee corporation, owner and operator, to serve as seaman and fisherman upon the sailing vessel, “Star of Finland.” He sailed upon her to Alaska and served with her there while she engaged in fishing, from the middle of May, 1921, until the middle of September. In compliance with the above-mentioned statutes, appellee paid the taxes which they imposed upon him and, on final settlement, charged the same against his wages. By this proceeding he seeks to recover the amount so deducted. Without opinion the court below sustained the validity of the taxes. Both statutes have been considered and



upheld by the Circuit Court of Appeals for the Ninth Circuit. *Alaska Packers' Association v. Hedenskoy*, 267 Fed. 154; *Northern Commercial Co. v. Territory of Alaska*, 289 Fed. 786.

Plainly, we think, the Territorial Legislature had authority under the terms of the Organic Act to impose both the head and the license tax unless, for want of power, Congress itself could not have laid them by direct action. *Talbott v. Silver Bow County*, 139 U. S. 438, 448; *Binns v. United States*, 194 U. S. 486, 491; *Alaska Pacific Fisheries v. United States*, 248 U. S. 78, 87; *Territory of Alaska v. Troy*, 258 U. S. 101.

Appellant went to the Territory for the purpose of engaging in the business of fishing and remained there for at least four months. He was not merely passing through—not a mere sightseer or tourist—but for a considerable period while so employed enjoyed the protection and was within the jurisdiction of the local government. To require him to contribute something toward its support did not deprive him of property without due process of law within the Fifth Amendment. Such cases as *Dewey v. Des Moines*, 173 U. S. 193, and *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 202, relied upon to support the contrary view, are not controlling.

The tax was upon an individual actually within the Territory; there was no attempt to reach something in a mere state of transit or beyond the borders. Some general rules touching the taxation of property were pointed out in *Brown v. Houston*, 114 U. S. 622, 632, 633, and *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18. No more stringent ones should be applied when poll taxes are questioned. Unless restrained by constitutional provision, the sovereign has power to tax all persons and property actually within its jurisdiction and enjoying the benefit and protection of its laws. Cooley on Taxation, 3d ed., p. 22.

We are not here concerned with taxation by a State. The license tax cannot be said to conflict with § 2, Art. IV, of the Constitution—"the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." It applies only to nonresident fishermen; citizens of every State are treated alike. Only residents of the Territory are preferred. This is not wholly arbitrary or unreasonable, and we find nothing in the Constitution which prohibits Congress from favoring those who have acquired a local residence and upon whose efforts the future development of the Territory must largely depend. See *Alaska Pacific Fisheries v. United States*, *supra*, and *Alaska Fish Co. v. Smith*, 255 U. S. 44, 47, 48.

None of the points relied upon by appellant is well taken and the decree below must be

*Affirmed.*